

ESTTA Tracking number: **ESTTA533695**Filing date: **04/22/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Kimberly-Clark Global Sales, LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	2100 WINCHESTER ROAD NEENAH, WI 54956 UNITED STATES		

Name	Kimberly-Clark Worldwide, Inc.		
Entity	Limited liability company	Citizenship	Delaware
Address	2300 Winchester Road NEENAH, WI 54956 UNITED STATES		

Attorney information	Chad J. Doellinger & Carolyn M. Passen Katten Muchin Rosenman LLP 525 West Monroe Street Chicago, IL 60661 UNITED STATES chad.doellinger@kattenlaw.com, kristin.achterhof@kattenlaw.com, carolyn.passen@kattenlaw.com, deborah.wing@kattenlaw.com Phone:312-902-5200
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Applicant Information

Application No	85653299	Publication date	11/06/2012
Opposition Filing Date	04/22/2013	Opposition Period Ends	
Applicant	McAirlaids, Inc. 180 Corporate Drive Rocky Mount, VA 24151 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 1999/11/00 First Use In Commerce: 2004/10/00

All goods and services in the class are opposed, namely: absorbent food packaging pads comprised of paper; paper napkins; paper tablecloths; paper placemats; paper serviettes; filter paper

Grounds for Opposition

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Other	Applicant's Alleged Trade Dress is not inherently distinctive and has not acquired distinctiveness or secondary meaning and thus

	cannot function as a trademark. 15 USC Â§ 1052(f).
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Related Proceedings	United States District Court for the Western District of Virginia, Case No. 7:12-CV-00578
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Attachments	McAirlaid_Notice of Opposition 1.pdf (5 pages)(15314 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/cmp/
Name	Chad J. Doellinger & Carolyn M. Passen
Date	04/22/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

KIMBERLY-CLARK WORLDWIDE, INC.,)	
and KIMBERLY-CLARK GLOBAL)	
SALES, LLC,)	
)	
)	
Opposers,)	
)	
v.)	Opposition No. _____
)	
MCAIRLAIDS, INC.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Kimberly-Clark Worldwide, Inc., a Delaware corporation, with a business address of 2300 Winchester Road, Neenah, Wisconsin 54956 and Kimberly-Clark Global Sales, LLC, a Delaware limited liability company with a business address of 2100 Winchester Road, Neenah, Wisconsin 54956 (together, “Opposers” or “Kimberly-Clark”), both believe that they will be damaged by registration of the design mark that “consists of a three-dimensional configuration of goods where the mark is a repeating pattern of embossed dots on the goods” (“Applicant’s Alleged Trade Dress”), shown in U.S. Application Serial No. 85/653,299 (the “Application”), and owned by McAirloads, Inc., a Virginia corporation with an address identified in the Application as 180 Corporate Drive, Rocky Mount, Virginia 24151 (“Applicant” or “McAirloads”). Accordingly, for the reasons set forth below, Opposers hereby oppose registration of Applicant’s Alleged Trade Dress.

As grounds for opposition, it is alleged that:

1. On November 20, 2012, Applicant sued Opposers, along with Kimberly-Clark Corporation, in the United States District Court for the Western District of Virginia, Case No.

7:12-CV-00578 (the “Lawsuit”), for alleged federal and common law trade dress infringement and federal and common law unfair competition, based on Kimberly-Clark’s sale and marketing of the GoodNites[®] brand of disposable bed mats.

2. In the Lawsuit, Applicant claims that Kimberly-Clark’s GoodNites[®] brand disposable bed mats infringe Applicant’s alleged exclusive rights in and to alleged trade dress consisting of “a three-dimensional configuration of goods where the mark is a repeating pattern of embossed dots on the goods,” the same alleged trade dress that is the subject of the Application.

3. In addition to the GoodNites[®] brand disposable bed mats, Kimberly-Clark sells a variety of other products, including, but not limited to, napkins and paper towels.

4. Kimberly-Clark Worldwide, Inc. further asserts that, given the functional nature of Applicant’s Alleged Trade Dress, and the fact that Applicant’s Alleged Trade Dress is not inherently distinctive and has not acquired distinctiveness or secondary meaning, registration of Applicant’s Alleged Trade Dress could negatively impact the integrity of the Registry to the detriment of brand owners, including Kimberly-Clark Worldwide, Inc.

APPLICANT’S ALLEGED TRADE DRESS IS FUNCTIONAL

5. Opposers reallege and incorporate herein by reference the matters alleged in Paragraphs 1 through 4 of this Notice of Opposition.

6. On information and belief, Applicant’s Alleged Trade Dress is the result of a bonding process that helps create the strength and integrity of the product.

7. The functional benefits of embossing, and “dot” embossing in particular, have been recognized in the industry for years.

8. The functional nature of Applicant's Alleged Trade Dress is also demonstrated by utility patents owned by Applicant. U.S. Patent Nos. 6,675,702 and 8,343,612 both disclose the use of embossed dots for various functional purposes that include fusing layers of absorbent pads together.

9. Because Applicant's Alleged Trade Dress serves a functional or utilitarian purpose, it cannot serve as a trademark, and the Application should not proceed to registration. 15 USC § 1052(e)(5).

**APPLICANT'S ALLEGED TRADE DRESS LACKS
ACQUIRED DISTINCTIVENESS OR SECONDARY MEANING**

10. Opposers reallege and incorporate herein by reference the matters alleged in Paragraphs 1 through 9 of this Notice of Opposition.

11. In addition to Opposers' and Applicant's uses of dotted embossing, other third parties use dotted embossing on a variety of absorbent goods.

12. On information and belief, given the widespread use of embossed dots on absorbent products, Applicant's Alleged Trade Dress does not and cannot serve as a source-identifier. Put differently, when a consumer sees such dots, the consumer does not associate them with Applicant; to the contrary, the consumer recognizes them as a product feature that is present on various products he or she encounters when purchasing goods of the type set forth in the Application.

13. Because Applicant's Alleged Trade Dress is not inherently distinctive and has not acquired distinctiveness or secondary meaning, it cannot serve as a trademark, and the Application should not proceed to registration. 15 USC § 1052(f).

WHEREFORE, Opposers believe that they would be damaged by the registration of Applicant's Alleged Trade Dress and respectfully request that this opposition be sustained and registration of Applicant's Alleged Trade Dress be denied.

Date: April 22, 2013

Respectfully submitted,

/s/ Carolyn M. Passen_____

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*Counsel for Opposers Kimberly-Clark Worldwide, Inc. and
Kimberly-Clark Global Sales, LLC*

CERTIFICATE OF SERVICE

I, Carolyn M. Passen, an attorney, hereby certify that on this 22nd day of April, 2013, a copy of the foregoing Notice of Opposition was served on Applicant's attorney of record via U.S. Mail and e-mail at the following address:

Michael J. Hertz
Woods Rogers PLC
10 S Jefferson Street, Suite 1400
Roanoke, VA 24011-1327

Dated: April 22, 2013

/cmp/_____
Carolyn M. Passen